

Kyle, Wonda - ESA

From: Kathy.Groff [Kathy.Groff@lpcorp.com]
Sent: Wednesday, April 07, 2004 11:28 AM
To: ofccp-public@dol.gov
Subject: Comments on proposed amendment to 41 CFR Part 60-1.

Please add "Provides information to show that he/she possesses the objective, basic, advertised, job-related qualifications for the position" to the inter-agency definition of an applicant as presented to us on March 3, 2004

Background:

Early last month an inter-agency task force issued proposed amendments to the Uniform Guidelines on Employee Selection Procedures to provide a long-awaited definition of "applicant" where the internet and related electronic technologies were used.

Employers barely had a chance to read the joint proposed regulations before one of the agencies, the Office of Federal Contract Compliance Programs, announced different and additional requirements for federal contractors. That means that the joint regulations, which were supposed to "provide a common interpretation" of the selection guidelines, may not result in the uniformity employers wanted.

The joint proposal includes a 3-part definition of "applicant" for use with electronic job seekers:

- (1) The employer must act to fill a particular position;**
- (2) The job seeker must follow the employer's standard procedure for submitting applications; and**
- (3) The job seeker must show an interest in a particular position.**

If all three requirements are met, the job seeker is an "Applicant" for employer recordkeeping and for disparate impact analysis.

But the **OFCCP's proposed regulations** articulate a different test to be applied by government contractors. Perversely, employers who are federal contractors and subject to the OFCCP's rules are also employers subject to Title VII and the joint rules.

An electronic applicant for purposes of the OFCCP's oversight is an individual who:

- (1) Submits an expression of interest through the internet or related electronic means;**
- (2) The employer considers the submission;**
- (3) Provides information to show that he/she possesses the objective, basic, advertised, job-related qualifications for the position; and**
- (4) Has not withdrawn interest.**

Missing from this definition is the requirement that the job seeker follow the employer's standard procedure for submitting applications. That omission appears to leave employers with the obligation to consider job seekers regardless of whether the job seeker follows the rules for submitting applications.

But the proposed definition adds a requirement that employers wanted to see: the job seeker must meet basic requirements for the job as long as they are job-related, universally applied and objective.

Here comes the real recordkeeping burden: once employers have figured out how to apply the two different definitions and manage the two categories of data, those employers who have federal contracts must retain "any and all electronic submissions," regardless of whether the job seeker meets the requirements of the 4-part test.

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